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No. 87-1520

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In The Supreme Court of the United States

October Term, 1987

WILLIAM L. WILEY

PETITIONER

VERSUS

STATE OF MISSISSIPPI

RESPONDENT

**RESPONSE TO
PETITION FOR WRIT OF CERTIORARI
TO THE MISSISSIPPI SUPREME COURT**

MIKE MOORE
ATTORNEY GENERAL
STATE OF MISSISSIPPI

MARVIN L. WHITE, JR.
ASSISTANT ATTORNEY GENERAL

DONALD G. BARLOW
SPECIAL ASSISTANT ATTORNEY GENERAL
COUNSEL OF RECORD

POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205
TELEPHONE (601) 359-3680

COUNSEL FOR RESPONDENT

2708

QUESTION PRESENTED

1. Whether a state court, in considering the post-conviction petition of a defendant under sentence of death, may refuse to review an issue under the doctrine of res judicata when that issue was disposed of on direct appeal under an entirely different theory from that advanced in the post conviction petition, particularly where no federal constitutional issue was raised on direct appeal.

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NO. 87-1520

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

WILLIAM L. WILEY,
Petitioner

vs.

STATE OF MISSISSIPPI,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MISSISSIPPI

BRIEF IN OPPOSITION

Respondent, State of Mississippi respectfully prays that the Petition for Writ of Certiorari to the Supreme Court of the State of Mississippi be denied in this case.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Mississippi on petitioner's request for post conviction relief is reported as Wiley v. State, 517 So.2d 1373 (Miss. 1987),

and a copy of this opinion is included in petitioner's Appendix to Writ of Certiorari at pp. A1 thru A14. The opinion of the Supreme Court of Mississippi on petitioner's direct appeal is reported as Wiley v. State 484 So.2d 339 (Miss. 1986), a copy of this opinion is included in petitioner's Appendix to petitioner's Writ of Certiorari at pp. B1 thru B43.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court by way of Petition for Writ of Certiorari through the authority of 28 U.S.C. §1257 (3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOKED

Petitioner seeks to invoke the provisions of the Constitution of the United States, Amendment Eight and Amendment Fourteen. Also involved in resolution of

this petition is Mississippi Code Annotated §99-39-21 (2), (3) (1972, as amended) which reads as follows:

(2) The litigation of a factual issue at trial and on direct appeal of a specific state or federal legal theory or theories shall constitute a waiver of all other state or federal legal theories which could have been raised under said factual issue; and any relief sought under this chapter upon said facts but upon different state or federal legal theories shall be procedurally barred absent a showing of cause and actual prejudice.

(3) The doctrine of res judicata shall apply to all issues, both factual and legal, decided at trial and on direct appeal.

STATEMENT OF THE CASE

Petitioner William L. Wiley is currently a death row inmate in the State of Mississippi. He was convicted of the commission of a capital murder which occurred in Mississippi in 1982. After a bifurcated proceeding, he was sentenced to death by a jury in 1984. Mr. Wiley's first

death sentence was overturned by the Mississippi Supreme Court. Wiley v. State 449 So.2d 756 (Miss. 1984). Wiley was given another sentencing hearing and again received the death penalty, which was affirmed by the Mississippi Supreme Court on direct appeal. Wiley v. State, 484 So.2d 339 (Miss. 1986), cert. den. ___ U.S. ___, 100 S.Ct. 304, 93 L.Ed.2d 278, reh. den. ___ U.S. ___, 107 S.Ct. 604, 93 L.Ed.2d 604 (1986).

During the second sentencing hearing Marie Turner the wife of the victim was called as a witness. During the course of her testimony, Mrs. Turner testified penumbrally about the victim of the crime her late husband. The entire text of her testimony is set forth herein in Appendix B at pp. B1 thru B17.

Petitioner's trial counsel objected to certain of this testimony, and on direct appeal raised the issue concerning the propriety of this testimony under state law. At no time on direct appeal did petitioner ever raise this issue under the Eighth and/or Fourteenth Amendments to the Federal Constitution.

Petitioner filed an application for post-conviction relief in the Mississippi Supreme Court on April 3, 1987, seeking for the first time to raise the issue of the admission of this testimony as inappropriate under the federal constitution, basing his claim on this court's decision in Booth v. Maryland, 482 U.S. ___, 96 L.Ed.2d 440, 107 S.Ct. 2529 (1987). The state argued in response to this petition that this issue was barred from consideration because it had

been litigated previously on direct appeal, under a theory of state of law only.

Subsequent to this court's decision in Booth, the Mississippi Supreme Court on November 25, 1987 denied petitioner's post-conviction relief request, and denied a rehearing on January 13, 1988. [517 So.2d at 1373] The Mississippi Supreme Court's decision rested on the doctrine of res judicata because petitioner had not raised this issue on direct appeal under the federal constitution. The previous litigation of this issue had been totally under state law. Miss. Code Ann. §99-39-21 (2) (1972, as amended) provides that litigation of an issue at trial and on direct appeal of a specific state or federal theory or theories constitutes a waiver of all other state or federal legal theories which could have been raised under the

factual issues and any relief sought under this section upon the same facts but different state or federal legal theories is procedurally barred absent a showing of cause and actual prejudice. Gilliard v. State, 446 So.2d 590, 591-92 (Miss. 1984); In Re Hill, 467 So.2d 669, 671 (Miss. 1985); Johnson v. State, 508 So.2d 1126, 1127-28 (Miss. 1987). Section 99-39-21 (3) provides that the doctrine of res judicata applies to all issues both factual and legal decided at trial and on direct appeal. The Mississippi Supreme Court applied a well announced procedural bar to this issue because petitioner had failed to raise it as a federal constitutional issue on direct appeal. While this Court has not addressed the issue of procedural bars in this context, the Fifth Circuit Court of Appeals in Thompson v. Lynaugh, 821 F.2d 1080 (5th

Cir. 1987) has held that this Court's decision in Booth does not create a sufficiently novel issue to excuse a procedural default. Respondent therefore contends that this issue was properly decided by the Mississippi Supreme Court.

In the alternative, respondent contends that the testimony objected to in this cause does not rise to the level of that condemned by this Court in Booth v. Maryland, supra.

REASONS FOR DENYING THE WRIT

The Mississippi Supreme Court properly invoked a procedural bar as to the issue raised on this petition. Further, petitioner has presented no federal question of sufficient substance that would warrant the granting of this petition for writ of certiorari.

ARGUMENT

In Booth v. Maryland, U.S., 107 S.Ct. 2529, 96 L.Ed.2d 440 (1987), this Court held that a written, detailed report concerning the "impact" of a murder on the family of the victim should not be introduced at the sentencing phase of a capital murder trial. In the case at bar, the petitioner seeks to have this court term the rather innocuous remarks of the wife of the victim to be of the same import as the victim impact statement introduced in Booth, supra. Respondent respectfully suggests that Booth does not require suppression of statements such as those given by the wife of the victim in this cause, nor do such require a retrial of the petitioner.

Marie Turner, the wife of the victim testified at the trial of petitioner. Her entire testimony is set forth as Appendix B

to this response. At no point in any of her testimony did Mrs. Turner ever testify in any fashion regarding the "impact" of the crime upon herself or any other member of the victim's family. For the most part, her testimony consisted of relating the general day to day operations of the store which she and her husband owned and which was the scene of the homicide. This established her ability to identify items connected to the homicide, such as the money box. Most of the rest of her testimony regarded her efforts to find and recover evidence of the crime which the authorities were unable to do, and her general displeasure with the investigation of the homicide. At the beginning of her testimony, she did in fact testify as to how long she and the victim had been married, about their children and where both she and Mr. Turner had been

born. She also testified that the victim was not a violent person and was known as a good man and was nicknamed "Mr. Good Buddy". Respondent respectfully suggests that the testimony about the victims's nature was invited by the defense as in both opening statement [See Appendix A] and closing argument [See Appendix C], the defense characterized the victim as "usually" carrying a .38 caliber pistol. The defense in both arguments also implied to the jury that the only reason the victim was killed was because he had this pistol. The petitioner attempts to equate minor indications of the background of the victim, with the specific, detailed, and written victim impact statement introduced and condemned by this Court in Booth, supra. The two situations are simply not comparable.

Initially, respondent would contend that the Mississippi Supreme Court was correct in its holding in this cause that the issue presented by petitioner in his application to vacate or set aside judgment before that court was barred by the doctrine by res judicata. On direct appeal, petitioner had contended that the introduction of this testimony was error under state law. The Mississippi Supreme Court determined that issue under state law. Wiley v. State, 484 So.2d 339, 348 (Miss. 1986). [p. 15B, of the Petition for Certiorari]. Petitioner did not raise, nor did the Mississippi Supreme Court address this issue in any guise relating to the Eighth and Fourteenth Amendments to the Federal Constitution.

In ruling on this issue on the post-conviction request by petitioner, the

Mississippi Supreme Court stated in Wiley v. State, 517 So.2d 1373, 1377 (Miss. 1987):

This Court does not consider on a petition of this nature, issue raised and decided on the original appeal, even though theories for relief differ from those urged at trial and on appeal are now asserted.

Obviously, in his post-conviction request, Wiley asserted a different theory than he had on direct appeal, i.e. that the Eighth and Fourteenth Amendments to the Federal Constitution bar this testimony. The Mississippi Supreme Court, by holding that this issue was res judicata,¹ raised a procedural bar to this claim.² See: Gilliard v. State, 446 So.2d 590, 591-92 (Miss. 1984); In Re Hill, 467 So.2d 669, 671

¹ Miss. Code Ann. §99-39-21(3)(1972, as amended). See p. 3 of this response.

² Miss. Code Ann. §99-39-21(2)(1972, as amended). See p. 3 of this response.

(Miss. 1985); Johnson v. State, 508 So.2d 1126, 1127-28 (Miss. 1987). Respondent contends that such is a clear statement of independent and adequate state grounds for refusal to review this claim, and as such is entitled to deference in this Court. Michigan v. Long, 463 U.S. 1032, 77 L.Ed. 2d 1201, 103 S.Ct. 3469 (1983); Webb v. Webb, 451 U.S. 493, 101 S.Ct. 1889, 68 L.Ed.2d 392 (1981); Cardinale v. Louisiana, 394 U.S. 437, 89 S.Ct. 1162, 22 L.Ed.2d 398 (1969); Street v. New York, 394 U.S. 576, 89 S.Ct. 1354, 22 L.Ed.2d 572 (1969). Respondent has not found a case wherein this Court has addressed the issue of a procedural bar in this context, however, the Fifth Circuit Court of Appeals has done so. In Thompson v. Lynaugh, 821 F.2d 1080, 1082 (5th Cir. 1987) the Court stated:

Absent a showing of good cause, we must also conclude that Thompson cannot excuse his procedural

default. See *Murray v. Carrier*, ___ U.S. ___, ___, 106 S.Ct. 2639, 2650, 91 L.Ed.2d 397 (1986); *Smith v. Murray*, ___ U.S. ___, ___, 105 S.Ct. 2661, 2665-66, 91 L.Ed.2d 434 (1986); *Engle v. Isaac*, 456 U.S. 107, 129, 102 S.Ct. 1558, 1572-73, 71 L.Ed.2d 783 (1982). The Supreme Court's decision in *Booth* does not create a sufficiently novel issue to excuse a procedural default, for it merely reiterates what the Supreme Court has previously held: The Eighth Amendment requires that sentencing in a capital murder case must focus on the individualized character of the defendant and the particular circumstances of the crime. See *Booth*, ___ U.S. at ___, 107 S.Ct. at 2532, 41 Crim.L.Rptr. at 3283; *Zant v. Stephens*, 462 U.S. 862, 878-79, 103 S.Ct. 2733, 2743-44, 77 L.Ed.2d 235 (1983); *Eddings v. Oklahoma*, 455 U.S. 104, 112, 102 S.Ct. 869, 875, 71 L.Ed.2d 1 (1982). Moreover, any claim of futility of objection under state law would not constitute good cause to excuse a procedural default. See *Engle v. Isaac*, 456 U.S. at 130, 102 S.Ct. at 1573. [Emphasis added]

Respondent respectfully suggests that the reasoning of the Fifth Circuit Court of Appeals on this issue is sound. This Court's decision in *Booth* did not mark a

"change" in the law, and certainly did not create a sufficiently novel issue to justify a procedural default. Respondent respectfully suggests that this is distinguishable from the situation in Yates v. Aiken, 108 S.Ct. 534 (1988). In Yates, supra, the South Carolina Supreme Court had held that its prior decision under substantive state law, in effect should not be given retroactive effect and ignored this Court's instruction to review under this Court's interpretation of the substantive law at issue. The cases are patently distinguishable. In Yates, the issue was what substantive law to apply, whereas here, the procedural bar is the basis for the Mississippi Supreme Court's ruling. The Mississippi Supreme Court did not reach the substantive issue.

Further, the Mississippi Supreme court did not apply the doctrine of res judicata to this "constitutional analysis" of its earlier ruling, because there had been no such constitutional analysis due to the failure of petitioner to raise the issue other than under state law. For these reasons, and in particular because of the rationale, with which respondent agrees, of the Fifth Circuit Court of Appeals respondent respectfully suggests that the Mississippi Supreme Court was justified in applying its doctrine of res judicata as a procedural bar to petitioner raising this issue in a post conviction setting under a different theory than had been urged on direct appeal.

Even were this court to address the merits of this issue, however, respondent respectfully suggests that the statements by the victim's wife in this case simply do not

fall within the ambit of Booth, supra. As set forth above, in Booth, supra, there was a written, specific, detailed account of the impact of the murder on the surviving members of the victims family. This is simply not the situation in the case at bar. While there were some innocuous references to the victim himself, there was never any indication of any impact on the victim's wife or other members of the victim's family. While this Court in Booth did indicate that a decision in a case such as this should not rest on the fact that the victim was an asset to the community, Booth, supra, 42 U.S. at ___, 96 L.Ed.2d at 450 (fn. 8), respondent respectfully suggests that this court did not intend to preclude statements such as those made by the victim's wife in this case. Particularly after statements by the defense in opening

about the victim such as are set forth in Appendix A.

Homicides do not occur in a vacuum, the victim was a human being prior to the murder, just as the murderer is a human being subsequent to the homicide. Surely, the victim is entitled to the dignity of being treated as a person as much as the murderer is. To preclude any reference to the victim as a person in a murder case, would reduce the victim to no more than a cold, lifeless lump on a slab in the morgue. Respondent respectfully suggests that this would be as much an affront to human dignity as allowing the murderer to be sentenced solely on the basis of the impact of the murder on the victim's survivors.

This Court has granted certiorari on a Booth issue in Mills v. Maryland, __U.S.__, 108 S.Ct. 484, 98 L.Ed.2d 483 (1987). In

the case below, Mills v. State, 310 Md. 33, 527 A.2d 3 (1987) the court had allowed into evidence a written statement summarizing an interview with the victim's brother and sister-in-law, which recounted in detail the sad and pathetic life of the victim. [527 A.2d at p. 22, fn. 14]. Likewise, as set forth by petitioner, the Florida Supreme Court in Patterson v. State, 513 So.2d 1257, 1263 (1987) condemned introduction of testimony by the victim's niece who had responsibility for the victim's children after her death. However, that testimony specifically related to the effect of the victim's death on the children and her own personal opinion that the death penalty was appropriate. Again, this is a far cry from the situation in the case at bar. Here, the victim's wife merely testified to superficial background information concerning the

victim, and at no time testified as to the impact of the murder on herself or other members of the victim's family. While the prosecutor did in fact characterize the murder of the victim in this case as "tragic", respondent respectfully suggests that this had absolutely no affect on the jury, and is similar to referring to the ocean as "wet".

For the above stated reasons, respondent respectfully suggests that the Mississippi Supreme Court was justified in applying its doctrine of res judicata to the issue presented to it on the post conviction request by petitioner, and under the rationale of the Fifth Circuit in Thompson, supra this Court should uphold that application. Further, even if this Court were to examine the merits of this case, it is patently evident that the factual setting

of this case simply does not rise to a level requiring the application of the doctrine espoused by this Court in Booth v. Maryland, supra. To hold statements such as made by the victim's wife in this case inappropriate would be to deny the victim basic human dignity.

CONCLUSION

Respondents respectfully suggest that the writ of certiorari should be denied in this case as the issue is procedurally barred as petitioner did not raise the issue at the time or in the manner requested by state law. Further, since the factual scenario of this case is so far removed from either Booth, supra or Mills v. Maryland, supra, this court should not combine this case with Mills v. Maryland, supra or hold

this petition pending the disposition of
Mills.

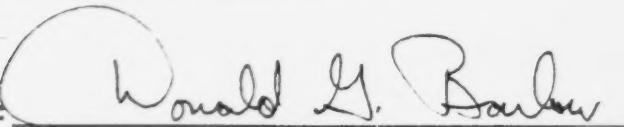
Respectfully submitted,

MIKE MOORE
ATTORNEY GENERAL
STATE OF MISSISSIPPI

MARVIN L. WHITE, JR.
ASSISTANT ATTORNEY GENERAL

DONALD G. BARLOW
SPECIAL ASSISTANT ATTORNEY GENERAL
(Counsel of Record)

BY:

A handwritten signature in cursive script, appearing to read "Donald G. Barlow", is written over a horizontal line.

DONALD G. BARLOW

CERTIFICATE OF SERVICE

I, Donald G. Barlow, a Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day caused to be mailed, via United States Postal Service, first-class postage prepaid, three (3) true and correct copies of the foregoing Response to Petition for Writ of Certiorari to the following:

Honorable James C. McKay
COVINGTON & BURLING
Post Office Box 7566
Washington, D.C. 20044

This the 6th day of May, 1988.


DONALD G. BARLOW

APPENDIX A

EXCERPT FROM OPENING STATEMENT BY DEFENSE

Mr. Turner came out of the store with the money box. Inside that money box was a small money bag containing three or four hundred dollars. Mr. Wiley Came up from behind. Mr. Turner was facing the other direction -- he came up from behind with the shotgun and yelled, "Drop the money," and fired. When he did this -- the shotgun -- it was a sawed-off shotgun -- it was a shortened barrel shotgun -- and the proof will show that a sawed-off shotgun spreads out the -- the shot spreads out much more rapidly than you might think. A shotgun contains tiny pellets, for those of you who don't know, and in a sawed-off shotgun, rather than direct -- in one direction, they spread out. But at any rate, Mr. Wiley came up and said, "Drop the money," and shot up, but when he shot up, some of the shots hit Mr.

Turner, not a lot because at that point, Mr. Turner turned around and had a .38 caliber revolver in his hand, and I guess you know what happened at that point. When Mr. Turner turned around with that pistol in his hand, Mr. Wiley, who I had every belief had no intention of killing Mr. Turner, shot Mr. Turner. When Mr. Turner turned around with that .38, Mr. Wiley shot him. There's going to be some conflict as to what he was doing when he shot. The State's going to attempt to show you that he was walking forward as he shot, but I'm going to attempt to show you that that's impossible, because if he had been that first shot that was fired upward would have never hit the man. He had to have been standing closer the first time that he shot him. There's also going to be proof to show that when a shotgun fires, those of you who have shot guns know, that they'll kick -- a pump will kick the shell -- the empty shell out in whatever direction the cartridge

opening is set at. In other words, if you fire the gun in this direction or pump in this direction, it will kick the shell out this way. If you pump in this direction, it'll kick the shell out that way. What I'm saying is, there's no way to know in what order the shells were fired. At any rate, Mr. Wiley had shot Mr. Turner. He had fallen down and he could hear Mrs. Harvey in the background yelling. Now, at the time, he did not know he had shot Mrs. Harvey. For all he knew, she was perfectly healthy. She was shot by accident. He shot at Mr. Turner in a panic, and some of the shot went past Mr. Turner and hit Mrs. Harvey. Now, you picture the scene. Mr. Turner is on the ground having been shot. He's still alive. He's badly wounded. Mrs. Harvey is over not very far maybe twenty feet away hollering, and here is what the State wants you to believe is a cold-blooded murderer, standing there holding the shotgun in his hand with an

unspent shell right beside it and a .38 caliber revolver right beside it. Now, what you're going to decide is why a cold-blooded murderer wouldn't have picked up that pistol and killed Mr. Turner, shot him in the head and walked over and killed Mrs. Harvey; both of whom knew him and both of whom could have identified him, as far as he knows.

APPENDIX B

TESTIMONY OF MARIE TURNER

(A witness introduced for and on behalf of the State of Mississippi, after being first duly sworn to tell the truth, was examined and testified as follows, to-wit:)

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q. Would you state your name, please, ma'am?

A. Marie Turner.

Q. Mrs. Turner, where do you live?

A. Olive Branch.

Q. How long have you lived in Olive Branch?

A. As of now twenty-two years.

Q. Mrs. Turner, were you ever married?

A. Once.

Q. And, who were you married to?

A. J. B. Turner.

Q. Would you like some water, please, ma'am?

A. No.

Q. When did you and Mr. Turner marry?

A. '41.

Q. 1941?

A. Yes, sir.

Q. Where did you marry?

A. DeSoto County.

Q. Were you originally from DeSoto County?

A. No.

Q. Where were you originally from?

A. Marshall County.

Q. You were originally from Marshall County?

A. Yes.

Q. Do you know where Mr. Turner was from?
Where was he originally from?

A. Lafayette County.

Q. How long had y'all lived in DeSoto County
prior to his death?

A. Prior to his death -- let's see -- fifteen years I'd say. I don't remember right now.

Q. What was Mr. Turner's occupation?

A. At the time?

Q. Yes, ma'am. At the time of his death?

A. We had -- we were in a store.

Q. What kind of operation was that, Mrs. Turner?

A. Something like a convenience store, on the same order.

Q. And, where was it located; where was the store?

A. Old Highway 78 at Mineral Wells.

Q. How long had y'all run that store -- grocery store prior to Mr. Turner's death?

A. I think it was three years and a couple of months.

Q. What were your hours of business at the store -- when did you open and when did you close the store generally?

A. 7:00 in the morning and about midnight, I guess. I'm not sure.

Q. Now, let me ask you this, Mrs. Turner, did you and Mr. Turner have any children?

A. Five.

Q. Five. And, at the time of his death, how old was your youngest child, approximately?

A. The youngest -- about thirty I think.

Q. And, approximately how old was the oldest child?

A. Thirty-eight.

Q. So, then, at the time of Mr. Turner's death, your children were grown; they were grown children?

A. Yes.

Q. Did any of the children assist you and Mr. Turner in the operation of that store from time-to-time?

A. Yes. Our oldest daughter, Pat.

Q. Beg pardon, ma'am?

A. The oldest daughter, Pat.

Q. Pat helped y'all out from time-to-time? Now, directing your attention to the date of Mr. Turner's death, I'm ask you, first of all, and I know you do, do you recall that day?

A. Yes, sir.

Q. On the 21st of August, 1981, did Mr. Turner go to work as usual?

A. Yes, he did.

Q. What would have been the normal closing time on that particular day; what time would Mr. Turner have normally closed shop?

A. 12:00 midnight.

Q. 12:00 midnight? Did you see him during that day?

A. Yes, sir.

Q. Were you at the store yourself?

A. Yes.

Q. What time did you leave that store, Mrs. Turner?

A. Between 9:00 and 9:30.

Q. And, where did you go when you left the store?

A. I went home.

Q. And, who was at the store when you left?

A. Well, Pat and my husband as far as I can remember, was the only two there.

Q. You can't remember whether there was any customers in there?

A. No, I don't.

Q. You do know that Pat and your husband were there when you left around 9:00 or 9:30?

A. Uh huh.

Q. Now, did you take anything with you when you left if you can recall?

A. Not that I recall.

Q. What was Mr. Turner's general procedure when he was closing the store at night?

A. He would read the gas pump and just do the normal things, you know, like -- we never counted up. We always just put everything together in the bag, you know, and took it home

and did it there. We did the counting up there.

Q. Do you recall what kind of a bag he would put the daily receipts in when he would leave at night?

A. Well, we got a little leather-like bag, which was about five by eight, I'd say, and, of course, he dropped that down in the larger metal box.

Q. I'm showing you what has been received as Exhibit S-29. Can you identify that, please, ma'am?

A. That looks like it.

Q. Like the money bag Mr. Turner used to put the daily receipts in?

A. Yes.

Q. And, what about this, ma'am -- this Exhibit S-19?

A. That's it.

Q. Can you identify that? What is that, please, ma'am?

A. That's the box that we used.

Q. That's the box. Well, customarily at the close of business rather than count up at the store, Mr. Turner would take the daily receipts and put them in this -- in this bag, zip it up and put it in that box and then look up and come home?

A. Right.

Q. Now, after this tragedy that happened on the 21st -- late night hours of the 21st and early morning hours of the 22nd, did you ever find that larger box, and, if so, when and where?

A. Well, Max Wallace called and told me that he had found the gun. I said, "I have a feeling that the box and the other stuff is there too." And, so, the next morning three of us went up there and I started to looking -- we did -- we started to looking and I found it along with the cap.

Q. Now, how far would you say you found the box from the store itself?

A. About thirty yards.

Q. That would have been behind the store?

A. Southwest end.

Q. Southwest end of the store? Now, what was the terrain -- what kind -- was it a grown up place, open place or . . .

A. Yes, it was grown up real bad back there.

Q. Honeysuckle and bramble bushes and briars and so forth?

A. Yes, sir.

Q. Do you recall, Mrs. Turner, who was with you, helping you to look for the box on that occasion?

A. George Collins from Olive Branch and my daughter-in-law.

Q. After you found the box did you find the cap or did you find the cap first and the box second?

A. They were together.

Q. They were together?

A. Real close.

Q. And, the Sheriff's Department was notified by you after that happened?

A. Yes, sir.

Q. How long would you say it was before the officers arrived at this location?

A. Just a short time. I'm not sure -- fifteen or twenty minutes.

Q. Do you know approximately how much money Mr. Turner had on that occasion when he closed up?

A. Around \$400.00.

Q. And, that was money that belonged to the Turner family?

A. Yes, sir.

Q. It had come from their labors in that store; correct?

A. Yes.

Q. Now, about 12:00 or 12:30 were you notified that Mr. Turner had been shot . . .

A. Yes, sir.

Q. . . . that night? Do you recall who notified you; I mean, how you were notified?

A. Well, a black deputy and a white guy and there was another deputy. I know they was together when they came to my door and told me about it.

Q. Can you recall, ma'am, what you did after you got this tragic news?

A. No.

Q. How old was Mr. Turner at the time of his death, Mrs. Turner?

A. Sixty.

Q. Sixty years old? Mr. Turner wasn't a violent person was he?

A. No, sir.

COUNSEL FOR DEFENDANT (Mr. Franks):
Objection, Your Honor.

THE COURT: I overrule the objection at this point and time.

Q. He wasn't a mean person, was he?

A. No, I can't say that he was, no, sir.

Q. As a matter of fact he was a mighty good man, wasn't he, Mrs. Turner?

A. Yes.

Q. As a matter of fact, Mrs. Turner, Mr. Turner was known far and wide as "Mr. Good Buddy," wasn't he?

COUNSEL FOR DEFENDANT (Mr. Franks): I'm going to object to all of that, Your Honor, for the reason stated earlier regarding relevancy.

THE COURT: I overrule the objection.

COUNSEL FOR DEFENDANT (Mr. Franks): Thank you.

Q. Did he have a nickname, Mrs. Turner?

A. Several -- just what you said.

Q. "Mr. Good Buddy."

A. Right.

Q. Did Mr. Turner loan people money from time-to-time?

A. Very little.

COUNSEL FOR DEFENDANT (Mr. Franks):
Objection again, Your Honor.

THE COURT: I sustain the objection regarding relevancy.

DISTRICT ATTORNEY (Mr. Williams): We tender the witness, Your Honor.

COUNSEL FOR DEFENDANT (Mr. Franks): Court indulge me a moment, please.

(At this point in the proceedings, the Defense Counsel reviews his notes. Presently, the following proceedings take place.)

CROSS EXAMINATION

BY MR. FRANKS:

Q. Mrs. Turner, my name is Jim Franks. I'm the attorney who's representing William Wiley. I've talked with you before from the witness stand. I'm not going to try to trick you and I'm not going to try to harass you in any way. I don't want you to be nervous when you answer the questions. Most of the questions I've already asked you once before and I know what your answer will be. Did Mr. Turner carry a .38 caliber revolver with him fairly often, didn't he?

A. Yes, sir.

Q. And, did he carry it in his pocket or do you recall how he carried it?

A. I think most of the time he did carry it in his pocket.

Q. You knew William Wiley before this happened, didn't you?

A. Yes, sir.

Q. He'd come into the store on occasion?

A. He hadn't been in the store in about ten months when this happened.

Q. Uh huh. But, prior to that he had come -- he had come in the store.

A. Yes, sir.

Q. And I think y'all knew him as "Poochie;" isn't that correct?

A. Right, yes, sir.

Q. And I think you at one time expressed that you were surprised that -- that William Wiley had been charged with this crime; is that correct?

A. Well, yes, I really was.

Q. Was that because you were just surprised that he would do something like that?

A. Well, I don't know how to answer that. A lot of times you think you know people and you really don't.

Q. Yes, ma'am. You became quite angry at the Police Department because you had to do their job; didn't you?

A. Well, it did upset me and I think it would have upset anyone.

Q. Yes, ma'am. I agree. But, I think -- I believe the first I recall of this case, I saw you on television. Were you interviewed on television once or twice because you had found this stuff that the police hadn't found?

A. Yes, yes, I suppose.

Q. Did Mr. Wiley in the time that you knew him and the times that you saw him, ever display any violent nature about him?

A. No, sir.

Q. That was one of the reasons that you were surprised that he had been charged with this?

A. I suppose that was it.

Q. Thank you.

COUNSEL FOR DEFENDANT (Mr. Franks): That's all I have.

THE COURT: Redirect?

DISTRICT ATTORNEY (Mr. Williams): Indulge us.

(At this point in the proceedings, the District Attorney and Assistant District Attorney confer at counsel table. Presently, the following proceedings take place.)

DISTRICT ATTORNEY (Mr. Williams): We have no further questions from Mrs. Turner.

THE COURT: All right. You may step down, Mrs. Turner.

WITNESS EXCUSED

APPENDIX C

EXCERPT FROM CLOSING STATEMENT BY DEFENSE

When William Wiley Came around the corner and fired, Mr. Turner pulled the pistol out. Now, does it make one bit of sense to you that a man, even armed with a sawed-off shotgun, was going to continue walking toward another man who's holding a .38 on him? Now, does that make one bit of sense or does it make more sense that William Wiley was close to Mr. Turner and when Mr. Turner pulled out that pistol, William Wiley started going backwards? Now, what would you do? I know you'd never be in that circumstances, but would you run head-long into a .38? Now, you gentlemen know how big a .38 is. That is no small caliber revolver. And, I know I wouldn't go into it. I'd be backing up.

